

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re Debra Marin**

**Docket No. 12-23649**

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**NOTICE OF PRESENTMENT OF EX PARTE MOTION  
FOR A 2004 EXAMINATION UNDER OATH  
AND PRODUCTION OF DOCUMENTS  
IN CONNECTION THEREWITH**

**PLEASE TAKE NOTICE** that the Debtor has filed a Motion with the court seeking an order (A) compelling Carla Marin to produce the documents identified in Exhibit "A" attached to the Motion; (B) compelling Carla Marin in person to testify as to the documents identified in Exhibit "A" attached to the Motion, as the documents relate to the administration of the Debtor's estate and the claim filed by Carla Marin and the Objection to Confirmation of the Plan filed by Carla Marin and Philip D. Marin as the executors of The Estate of Ana Beatriz Marin; and (C) granting such other relief as this court deems just and proper. The Motion is on file with the clerk of the Bankruptcy Court.

**YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.**

**TAKE FURTHER NOTICE** if you do not want the court to grant the relief requested by the debtor in his motion, or if you want the court to consider your views on the motion then **on or before June 1, 2015 you or your attorney must do three (3) things:**

- 1. File with the court a written response requesting that the Court hold a hearing and explaining your position. File the response on ECF Docket No. 12-23649 or mail to the Court at:**

United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must also mail or file on ECF Docket No. 12-23649 a copy of your written request to:**


Michael H. Schwartz, P.C.  
One Water Street  
White Plains, NY 10601

and to:

Jeffrey L. Sapir Esq.  
US Bankruptcy Trustee  
399 Knollwood Road, Suite 102  
White Plains, NY 10603

3. **Attend any hearing scheduled by the United States Bankruptcy Court, 300 Quarropas Street, White Plains, NY 10601.**

Dated: White Plains, NY  
27 day of May, 2015.



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Michael H. Schwartz, P.C.  
One Water Street  
White Plains, NY 10601

**UNITED STATES BANKRUPTCY COURT  
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**EXHIBIT "A" DOCUMENT REQUEST**

1. Any and all time records, time slips, expense sheets, bills, receipts, etc in support of the portion of the claim for legal fees and expenses in Claim 1 filed in this case on 1/9/2013.
2. Any and all documents that were reviewed for which the time records, time slips, expense sheets, receipts, etc in support of the time and expenses for the legal fees and expenses alleged in Claim 1 filed in this case on 1/9/2013.
3. Any and all documents that were prepared for which the time records, time slips, expense sheets, receipts, etc in support of the time and expenses for the legal fees and expenses alleged in Claim 1 filed in this case on 1/9/2013.
4. A copy of all payments received by Carla Marin in support of the amount allegedly due on the Note in Claim 1 filed in this case on 1/9/2013.
5. A Copy of all loan agreements, notes, mortgages, etc, in support of the amount allegedly due on the Note in Claim 1 filed in this case on 1/9/2013.
6. Copies of all invoices and proof of payment pertaining to all fees, charges, expenses ever charged, assessed or otherwise attributed to the Debtors' account whether recoverable or non-recoverable.
7. Complete loan transaction history report from the date the loan originated through to the current date.
8. Copies of all accounting ledgers pertaining to the Debtors' Loan.

9. All collection notes, mail, faxes, emails, and any other form or recording of all communications between Carla Marin and any representative of Carla Marin and Philip Marin or any representative of Philip Marin with respect to the mortgage or note in this case in support of Claim 1 filed in this case.
10. All collection notes, mail, faxes, emails, and any other form or recording of all communications between Carla Marin and any representative of Carla Marin and Philip Marin or any representative of Philip Marin and Debra Marin with respect to the mortgage or note in this case in support of Claim 1 filed in this case.
11. Complete accounting and all documentation of the funds received pertaining to the Debtor's account including all cancelled checks, receipts invoices, ledger entries, statements and the like in support of Claim 1 filed in this case.
12. Current written appraisal of the property located at 358 Route 292, Holmes, New York.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re Debra Marin**

**Docket No. 12-23649**

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**EX PARTE MOTION FOR A 2004 EXAMINATION UNDER OATH  
AND FOR ORDER FOR PRODUCTION OF DOCUMENTS  
IN CONNECTION THEREWITH**

TO: THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

Debtor, by her attorney Michael H. Schwartz moves the Court pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedures for an order:

- (a) Compelling Carla Marin as Executrix of Estate of Ana Beatriz Marin and Co-Executor of the Estate of Ana Beatriz Marin ("Carla Marin") to produce the documents as set forth in Exhibit "A" to this Motion at the date and time set forth below;
- (b) Compelling Carla Marin to appear for an examination and to answer any and all questions regarding the documents identified in Exhibit "A" attached to the Motion, as the documents relate to the administration of the Debtor's estate and the Claim of Carla Marin and the Objection to the Debtor's Plan by Carla Marin and Philip Marin as Executors of the Estate of Ana Beatriz Marin; and
- (c) Granting such other relief as this court deems just and proper.

**Required Date & Location for Production of Documents identified in Exhibit "A":**

**DATE: June 5, 2015**

**LOCATION: Michael H. Schwartz, P.C.  
One Water Street  
White Plains, New York, 10601**

**Requested Date and Location for Examination:**

**DATE: June 12, 2015 at 10:00AM**

**LOCATION: Michael H. Schwartz, P.C.  
One Water Street  
White Plains, New York 10601**

**BACKGROUND**

1. The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on September 17, 2012.
2. An objection to the Confirmation of the Debtor's plan was filed by Dawn Arnold on behalf of Carla Marin and Philip D. Marin as Executors of the Estate of Ana Beatriz Marin on November 19, 2012 (ECF Doc 18).
3. Carla Marin filed Proof of Claim in this case as Executrix of the Estate of Ana Beatriz Marin on January 9, 2013. (Claim No. 1).
4. An objection to the Prof of Claim was filed by Clair & Gjertsen on April 4, 2013 (ECF Doc 30).
5. An Affidavit in Supplemental Support was filed by Clair & Gjertsen on May 15, 2013 (ECF Doc 37).
6. A Reply Motion for Objection to Claim(s) Number: 1 and Supplemental Affirmation (related documents 30) was filed by Wendy Marie Weathers on behalf of Carla L. Marin and Philip D. Marin as Executors of the Estate of Ana Beatriz Marin on November 15, 2013 (ECF Doc 45).
7. This matter has been set down for a hearing on July 30, 2015.
8. No discovery has been held. No depositions have been held.
9. On May 20, 2015 I had a telephone conversation with Wendy Weathers, Esq. to

identify the remaining issues in this matter. I was not able to identify the remaining issues.

#### AUTHORITY FOR THE RELIEF REQUESTED

10. Bankruptcy Rule 2004(a) provides that "On the motion of any party in interest, the court may order the examination of any entity." Bankruptcy Rule 2004(b) provides, in relevant part, that the scope of such examination extends to acts relating to liabilities of the debtor. Courts that have analyzed Bankruptcy Rule 2004 have recognized the right of a party in interest to conduct a 2004 examination, and the permitted scope of that examination is extremely broad. See, e.g., In re Texaco, Inc., 79 B.R. 551, 553 (Bankr. S.D.N.Y. 1987) (citing In re Johns-Manville Corp., 42 B.R. 362 (S.D.N.Y.1984)).

11. "Good cause is the standard employed to determine if cause exists to support an examination under Bankruptcy Rule 2004. To obtain authority to conduct an examination, the movant must show some reasonable basis to examine the material...[and] that the requested documents are necessary to establish the movant's claim or that denial of production would cause undue hardship or injustice." In re Grabill Corp., 109 B.R. 329, 334 (N.D. 111.1989).

12. "Generally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination or denial of such request would cause the examiner undue hardship or injustice." See In re Meticom, Inc., 318 B.R. 263, 268 (S.D.N.Y. 2004); see also In re Express One Intl., 217 B.R. 215, 217 (Bankr. E.D.Tex.1998); In re Hammond, 140 B.R.197,201 (S.D. Ohio1992). "Good cause is established if the one seeking the Rule 2004 examination has shown that such an examination is reasonably necessary for the protection of its legitimate interest." Hammond, 140 B.R. at 201.

13. The Claim of Carla Marin as Executrix of the Estate of Ana Beatriz Marin remains unresolved.

14. The Objection to the Confirmation of the Plan by Carla Marin and Philip Marin as Executors of the Estate of Ann Beatriz Marin remains unresolved.

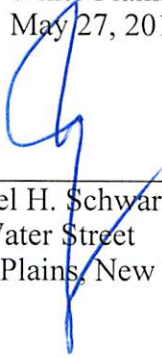
15. This matter has been set down for a hearing on July 30, 2015. No discovery whatsoever or testimony has been taken in this case.

16. Consequently, "cause" exists for the Court to compel document production under Bankruptcy Rules 2004(c) and 9016, and moreover, for the issuance of an order directing Carla Marin to appear for an examination under Bankruptcy Rule 2004.

**WHEREFORE**, Debtor respectfully requests the entry of an order substantially similar to the proposed order attached hereto..

- (a) Compelling Carla Marin to produce the documents identified in Exhibit "A" attached to this Motion;
- (b) Granting such other relief as this court deems just and proper.

Dated: White Plains, NY  
May 27, 2015



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Michael H. Schwartz  
One Water Street  
White Plains, New York 10901



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re Debra Marin**

**Docket No. 12-23649**

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**ORDER PURSUANT TO RULE 2004 OF THE FEDERAL RULES  
OF BANKRUPTCY PROCEDURE DIRECTING THE ORAL EXAMINATION  
OF CARLA MARIN AND PRODUCTION OF DOCUMENTS BY CARLA MARIN**

Upon the motion, dated May 27, 2015 (the “Motion”) of the above debtor, Debra Marin (“Debtor”) under Fed. R. Bankr. P. 2004 for an order (a) compelling Carla Marin to produce the documents identified in Exhibit “A” attached to the Motion and (b) compelling Carla Marin to appear and give testimony under oath as to the documents identified in Exhibit “A” to the motion, to answer any and all questions regarding the foregoing, as the documents and testimony relate to the administration of the Debtor’s estate and the claim of Carla Marin and the Objection to the Plan of Debra Marin by Carla Marin and Philip Marin as Executors of the Estate Of Ana Beatriz Marin; and good and sufficient cause appearing; and no additional notice being required except as provided herein; it is hereby

**ORDERED**, that the Motion is granted, and it is further

**ORDERED**, that the production of documents described in Exhibit “A” to the Motion, subject to any documents withheld under a claim of privilege (provided that such privilege shall be asserted in a proper privilege log to be provided when the documents are produced), be delivered to Michael H. Schwartz as counsel to the Debtor by

**4:00 PM, on June 5, 2015** at One Water Street, White Plains, NY 10601; and it

is further

**ORDERED** that Carla Marin appear and testify with respect thereto, under oath, at an examination on **June 12, 2015 at 10:00 AM**, at One Water Street, White Plains, NY 10601, and continuing from day to day until completed; and it is further and it is further

**ORDERED**, that this Order is without prejudice to the rights of the United States Trustee, the Chapter 13 trustee or other parties in interest to apply for further discovery from Carla Marin or any other party in this case.

Dated: White Plains, New York  
\_\_\_\_\_, 2015

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HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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Chapter 13

Case No. 12-23649

In re Debra Marin,

Affidavit of Service

debtor(s).

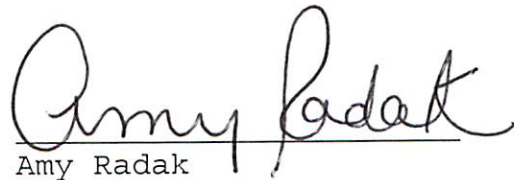
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State of New York                    }  
  : ss  
County of Westchester            }

I, Amy Radak, being duly sworn, hereby deposes and says:

I am and at all times during the service, was not less than 18 years of age and reside in the County of Westchester.

Service of the Notice of Presentment of ex parte motion for a 2004 examination was made by enclosing a true copy of same in a postage paid envelope and causing same to be delivered to the United States Postal Service for service by first class mail to each creditor and party in interest on the attached page(s) on 5/26/15.

  
Amy Radak

Sworn to before me this  
26<sup>th</sup> day of May, 2015

\_\_\_\_\_  
Notary Public

MICHAEL SCHWARTZ  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 41-4745659  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES 12-31-17

Wendy Weathers  
Cabanillas & Associates, P.C.  
120 Bloomingdale Road  
White Plains, NY 10601

Jeffrey L. Sapir, Esq.  
Chapter 13 Trustee  
399 Knollwood Road  
Suite 102  
White Plains, NY 10603

United States Department of Justice  
Office of the United States Trustee  
Southern District of New York  
201 Varick Street  
New York, NY 10014